

### **REMARKS/ARGUMENTS**

Claims 1 and 2 stand rejected as indefinite under 35 U.S.C. § 112 and obvious under 35 U.S.C. § 103 in view of U.S. Patent 5,741,136 to Kirksey et al. Applicant has amended claims 1 and 2 to eliminate indefinite claim to “many varieties of an object” and to clarify distinctions between Applicant’s invention and that of Kirksey et al.

Kirksey et al. describe an invention that “places words in the frame of reference of the speakers in the audio-visual (i.e. in planes not parallel to the plane of the viewing screen)...[so that] words moved from such plane into the actor’s world are more readily and meaningfully viewed and appear to the viewer as three-dimensional objects.” (Col. 3, lines 64-67, col. 4, lines 1-3). As is apparent from Figs. 2, 3, 8, 10, 11, 19a, 19c, 19d, 20a, 20b, and 25 and supporting descriptions, Kirksey et al. have developed a sophisticated method for displaying on a computer monitor the head of a person speaking a word while a caption or text display of that word appears to issue from the lips of the speaker in a manner that creates the illusion that the text display is moving out of the plane of the monitor, with a sound recording of the word simultaneously playing in coordination with the display. Kirksey et al. emphasize that “to avoid distraction and confusion, each spoken word should be accompanied by its sole written associate with the possible exception of an added pictogram of such word, sign language representation of such word, or foreign translation of such word.” (Col. 5, lines 24-29). “The words...are displayed as an integral part of and superimposed on the pictorial scene of the work...the pictorial scenes include components such as human figures, furniture, sky, a background cityscape, and so forth.” (Col 5, lines 8-12).

The “pictorial setting” is, in other words, merely background without any necessary relationship to the word or words enunciated. Kirksey uses “pictogram” in the specific manner of standard dictionary definitions, i.e. “a picture representing a word or idea; a hieroglyph; a record in hieroglyphic symbols; a pictorial representation of numerical data or relationships, especially a graph, but having each value represented by a proportional number of pictures.” The American Heritage® Dictionary of the English

Language, Fourth Edition. Houghton Mifflin Company, 2004.

<http://dictionary.reference.com/browse/pictogram> (accessed: June 22, 2008). A search of Google Images for “pictogram” returns numerous examples of iconic images commonly referred to as “pictograms.” Figs. 1 and 26 provide examples of such pictograms. Kirksey et al. do not teach or suggest sequential presentation of different realistic images of an object or action in different levels of abstraction because such repeated exposure would cause “distraction and confusion.” Instead, Kirksey et al. utilize an iconic pictogram to create “a recoverable association in the mind of the student between the written word...and the simultaneously presented referent(s).

The pictogram of Kirksey et al. functions as a mnemonic device that assists a student in remembering an association between the appearance a written word, the appearance of a person speaking the written word, and the sound of the written word. Kirksey et al. implicitly assume that the student understands the concept underlying the word and do not explore the scope the word.

In contrast, and as is made clearer by amendments to Claims 1 and 2 of the instant application, Applicant’s invention is focused on assisting a child who is attempting to understand scope of a word. “Lion,” for example, may refer to the easily-recognized generic picture of a live male lion with a full mane, but it may also refer to a female lion, a cub, a stuffed animal, or a toy lion, all of which are visually different objects that share an abstract property. Applicant’s invention explores “lion” and other words by cycling through images showing examples with a common property at different levels of abstraction, allowing a child to grasp the scope of each term by making incremental steps between levels. Kirksey et al. do not teach or suggest Applicant’s invention because Kirksey et al. pursue a different objective by a different method. Applicant’s method would impede the practice of Kirksey’s method; Kirksey’s method could not achieve Applicant’s objectives.

In reference to the portion of the rejection based on Official Notice that “displaying a variety of images of the object in context...is well known,” Applicant is unable to locate or access episodes of Sesame Street and/or Elmo’s World broadcast or

otherwise distributed during the relevant time period as cited by the examiner. Since amended Claims 1 and 2 refer to images of different levels of abstraction rather than to “displaying a variety of images of the object in context,” Applicant is uncertain as to whether the Examiner would wish to maintain this basis for rejection. However, since Official “notice of facts beyond the record which may be taken by the Examiner must be ‘capable of such instant and unquestionable demonstration as to defy dispute’,” (*In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970)), and since Applicant is unable to access and evaluate the references the Examiner has cited as support, and since Applicant was deeply involved in the development of audio-visual educational products before and at the time the instant application was filed and is nonetheless unable to recall any contemporaneous examples that would teach or suggest the Applicant’s systematic exploration of different levels of abstraction, Applicant must request that the Examiner support any continued rejection based on Official Notice with documentary evidence. In a similar vein, while rote repetition of information may be a known teaching technique, no art has been cited that teaches or suggests Applicant’s specific method of progressing from a low level of abstraction to higher levels of abstraction, then returning to a low level of abstraction to reinforce mental associations. Again, if the Examiner wishes to maintain this basis for rejection despite Applicant’s claim amendments, Applicant must request that the Examiner support any continued rejection based on Official Notice with documentary evidence.

Applicant believes that the application is in condition for allowance and therefore respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bruce E. Weir". The signature is written in a cursive, slightly stylized font.

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